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March 30, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Tariffs Implementing Access Charge Reform; CC Docket No. 97-250

Dear Ms. Salas:

Enclosed herewith for filing are the original and sixteen (16) copies of MCI Telecommunications Corporation's Reply Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Reply Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Mary L. Brown

Mary L. Brown

Enclosure
MLB

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Tariffs Implementing	)	CC Docket No. 97-250
Access Charge Reform	)	CCB/CPD 98-12

MCI REPLY COMMENTS

Mary L. Brown
Don Sussman
MCI Telecommunications Corp.
1801 Pennsylvania Ave., NW
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March 30, 1998

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Summary

On February 24, 1998, MCI Telecommunications Corporation (MCI) filed an Emergency Petition for Prescription in the Matter of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, which was placed on public notice February 26, 1998.[1] In the Emergency Petition, MCI demonstrated that the Commission's limited access reform policies have placed long distance carriers in the position of having to recover new access costs represented by the presubscribed interexchange carrier charge (PICC) and incumbent local exchange carrier (ILEC) universal service fund (USF) flow throughs without the essential data needed to make certain that long distance carriers are collecting these fees in the most accurate way from their customer base. MCI also pointed out that this "guessing game" forces long distance carriers to balance the risk of charging customers too much -- resulting in competitive consequences in the long distance markets -- or too little, leaving long distance carriers financially weaker and less able to enter local markets. Over one month after MCI filed its Emergency Petition for Prescription, and four months after the Commission's access reform policies took effect, ILECs still are not providing IXCs information necessary to support their PICC bills. On March 18, 1998, the Commission received comments from 18 parties, to which MCI replies herein.

[1] MCI Telecommunications Corporation Petition the Commission for Prescription of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, DA 98-385.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
	)	
Tariffs Implementing	)	**CC Docket No. 97-250**
Access Charge Reform	)	**CCB/CPD 98-12**

MCI REPLY COMMENTS

I. Introduction

Over one month after MCI Telecommunications Corporation (MCI) filed its Emergency Petition for Prescription, and four months after the Commission's access reform policies took effect, incumbent local exchange carriers (ILECs) still are not providing IXCs information necessary to support their PICC bills. For example, while MCI finally received our first presubscribed interexchange carrier charge (PICC) bills for January and February in mid-March from BellSouth and SBC, both carriers failed to provide basic bill information, such as customer line count, customer classification (e.g., primary versus non-primary, and Centrex versus ISDN). This has made it impossible to verify the accuracy of the PICC bills. Additionally, while MCI has received more complete PICC bills from Ameritech, Bell Atlantic, and US West, these carriers' PICC bills contain significant errors, such as double-billing of lines, incorrect classification of customers, and charges for lines that have not been presubscribed to MCI. It is clear that the need for quick Commission action, as outlined in MCI's Emergency Petition, remains a priority.

II. Background

On February 24, 1998, MCI Telecommunications filed an Emergency Petition for Prescription in the Matter of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, which was placed on public notice February 26, 1998.[2] In the Emergency Petition, MCI demonstrated that the Commission's limited access reform policies have placed long distance carriers in the position of having to recover new access costs represented by the presubscribed interexchange carrier charge (PICC) and incumbent local exchange carrier (ILEC) universal service fund (USF) flow throughs without the essential data needed to make certain that long distance carriers are collecting these fees in the most accurate way from their customer base. MCI also pointed out that this "guessing game" forces long distance carriers to balance the risk of charging customers too much -- resulting in competitive consequences in the long distance markets -- or too little, leaving long distance carriers financially weaker and less able to enter local markets.

For these reasons, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, MCI requested an immediate prescription of key rate levels, terms, and conditions in the pending tariff investigation. Specifically, MCI requested that the Commission eliminate the distinctions between primary and non-primary lines, as the costs associated with implementing such distinctions clearly outweigh the benefits. MCI also requested that the

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[2] MCI Telecommunications Corporation Petition the Commission for Prescription of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, DA 98-385.

Commission:

- Hold the ILECs responsible for collection of PICC until such time as they can provide all necessary information to IXCs in advance of billing;

- Prescribe a standardized, independently verifiable, definition of primary and non-primary lines;

- Require the ILECs to provide auditable line count information, by telephone number, immediately;

- Move as quickly as possible to grant the Sprint petition or prescribe language that makes clear that IXCs can notify ILECs of de-PICs; and,

- Standardize the date used by ILECs to decide which customers' PICCs are assigned to a particular IXC.

Additionally, MCI requested that, regardless of the determinations the Commission makes regarding the PICC, the Commission should require the ILECs to provide to each IXC the amount of USF pass through each IXC is receiving in its access bills every month. This will allow the IXCs to monitor and recover USF costs more efficiently and accurately. As MCI explained in its Emergency Petition, these are all items that, for the most part, the Commission itself has noted require resolution.

MCI also demonstrated in its Emergency Petition that the fundamental assumption of the Access Charge Reform Order -- that UNEs would enable significant competition in a reasonable timeframe -- has been invalidated.[3] Unbundled network elements are not available at forward-looking economic cost throughout the country, need not be combined by the ILEC, and cannot be

[3]Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 10119 (1997)(Access Charge Reform Order).

ordered in a nondiscriminatory manner. Furthermore, there is no prospect that these roadblocks will be cleared in the near future. The reality is that without widespread availability of UNEs priced at forward-looking economic cost and available in combinations, competitive entry cannot occur fast enough to put downward pressure on ILEC access rates in the foreseeable future.

In addition to the fundamental economic deficiencies of the access structure and rate levels resulting from the Access Charge Reform Order (e.g., access charges that continue to significantly exceed forward-looking economic cost), MCI explained that the manner in which the Commission has chosen to implement its limited access reform policies is not practical. Under the current flat-rate line structure (i.e., where IXCs are assessed a PICC for each presubscribed line, regardless of usage), IXCs are placed in a position where there is no efficient cost-causative manner in which they can recover PICC charges assessed on them by the ILEC for zero-usage customers. So that long distance carriers and their customers are not harmed, the Commission should immediately require ILECs to recover the PICC from end users. This modification would end the guessing on which IXCs currently must base their PICC cost recovery, significantly reduce the risk of uncollectibles, and allow all carriers to recover costs in the most efficient, cost-causative manner.

MCI, therefore, requested that the Commission re-visit and significantly modify its access reform policies by July 1, 1998, because many of the fundamental assumptions on which the Commission based its decisions have not been realized. As MCI explained in its Emergency Petition, absent significant modifications -- the most notable of which include immediately lowering access rates to forward-looking economic cost and requiring ILECs to recover PICCs directly from end users -- long distance carriers will continue to be competitively disadvantaged, long distance consumers will be harmed, and competition in local markets will be seriously jeopardized.

On March 18, 1998, the Commission received comments from 18 parties, to which MCI replies herein.

III. The Commission Must Lower Interstate Access Charges To Forward-Looking Economic Cost

The Commission stated clearly in the Access Charge Reform Order[4] that its goal is to reduce interstate access charges to cost because access charges higher than cost "imped[e] the efficient development of competition" and "generate inefficient and undesirable economic behavior."[5] The Commission's decision to adopt the market-based approach in that order to achieve this goal was based on a predictive judgment that competition would develop sufficiently to constrain access charges.[6] However, not only is it clear that current competitive conditions are not reducing incumbent local exchange carrier (ILEC) access charges, but there is no prospect that market forces will discipline access charges to any significant degree between now and 2001,

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[4]Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 10119 (1997)(Access Charge Reform Order)

[5] Access Charge Reform Order at ¶42 ("To fulfill Congress's pro-competitive mandate, access charges should ultimately reflect rates that would exist in a competitive market."). See also Access Charge Reform Order at ¶30.

[6]See Brief for Federal Communications Commission, Southwestern Bell Telephone Co. v. Federal Communications Commission, Case Nos. 97-2866/2873/2875/3012 (8th Cir.), October 16, 1997 at 98.

the period the Commission allotted to the market-based approach.[7] As MCI pointed out in its Emergency Petition, events of the past year have undermined all of the assumptions upon which this predictive judgment was based.[8]

Not surprisingly, several parties that benefit from high access charges commented that MCI's entire Emergency Petition should be dismissed because it is nothing more than an untimely Petition for Reconsideration of the Access Charge Reform Order and Universal Service Order. This argument is without merit. MCI's Petition accurately depicts the current competitive environment in the local exchange marketplace. No party provided information to the contrary. In fact, Ameritech's own comments support MCI's conclusion that competitive forces are not developing fast enough to lower access charges. In Appendix C of its comments, Ameritech asserts that competitors have purchased 68,386 unbundled loops through its entire region. While this number is unsupported, even if it were accurate, it would show that more than two years after passage of the Telecommunications Act of 1996, competitors serve less than 0.27 percent of the local market through unbundled loops in the Ameritech region.[9] This is significant since Congress clearly intended for unbundled network elements to drive local competition. Clearly Ameritech's monopoly status remains unchallenged in its region, and the level of competition

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[7] Access Charge Reform Order at ¶48 ("Where competition has not emerged, we reserve the right to adjust rates in the future to bring them into line with forward-looking costs. To assist us in that effort, we will require price cap LECs to submit forward-looking cost studies of their services no later than February 8, 2001, and sooner if we determine that competition is not developing sufficiently for the market-based approach to work.")

[8] MCI Emergency Petition at 3-13.

[9] Based on information contained in Table 18.2 of Trends In Telephone Service, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, February 1998, the total number of lines in the region served by Ameritech is 25.6 million.

that exists in Ameritech's region is insufficient to place downward pressure on monopoly interstate access rates.

MCI's Petition does not seek reconsideration of the Commission's Access Reform and Universal Service orders. MCI's petition simply points out that the Commission stated in its Access Charge Reform Order that if it was not satisfied as to how competition was developing in local exchange markets, it would revisit its access reform policies. MCI's Petition, and the evidence provided in this proceeding and in the CFA proceeding,[10] demonstrate that the time to revisit access reform is now.

Additionally, while some parties are concerned that the Commission should not act on MCI's petition because certain issues might be more appropriately addressed in other dockets (e.g., defining primary lines in the Defining Primary Lines Docket, CC Docket No. 97-181), MCI believes that it is important that the Commission resolve the Access Reform implementation issues in whichever proceeding it so desires -- as long as it acts quickly. As MCI and other carriers have demonstrated to the Commission in this proceeding, the delays are costing long distance and local telecommunications carriers millions of dollars that otherwise could have been invested in telecommunications infrastructure.

The Commission should dismiss the argument that access rates should remain at inflated monopoly levels simply to encourage local investment. US West claims that if access were lowered to forward-looking economic levels, new entrants would not invest in local facilities

[10] In the Matter of Consumer Federation of America, International Communications Association and National Retail Federation Petition Requesting Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Review For Local Exchange Carriers, RM No. 9210.

because there would be no opportunity for them to earn a profit.[11] This is not true. Forward-looking economic costs include a reasonable profit that replicates the amount a carrier would earn in a competitive market place. It is true that current monopoly profit levels for interstate access services would be reduced. However, reductions in access charges to economic cost is undeniably in the public interest -- good for consumers and investors. Access rates that reflect forward-looking economic cost would drive only efficient investment, and would ensure that end users pay the lowest possible rates and are afforded the greatest possible choice. As the table below demonstrates, based on 1996 data, ILEC monopoly earnings on access continue to be excessive. In 1996, RBOC and GTE total operating cashflow margin was 43.4 percent.

RBOCs & GTE	**Net Revenue**	**Operating Cash Flow**	**Operating Cash Flow Margin**
Local	$45B	$9.8B	21.8%
Access	$27.6B	$19.2B	69.4%
IntraLATA Toll	$9.3B	$5.9B	63.2%

US West also makes its routine claim that the Commission cannot reduce access charges to cost because that would be a "taking." This is not true. Bringing access to cost using a prescriptive approach is not an unconstitutional taking under the Fifth Amendment.

The Commission is charged with assuring just and reasonable rates for all interstate services.[12] For long distance service, the Commission has found that competition achieves this

[11] US West Comments at 3.

[12] 1934 Act Title I, Sec. 2, 47 U.S.C. 151 - 52.

objective.[13] For interstate access, however, there is virtually no competition and regulation remains essential. In light of the fundamental changes brought on by passage of the 1996 Act, the level of access charges must be brought down to economically reasonable levels and changes should be made to the mechanism for collecting these charges.[14] Bringing down access charges to forward-looking economic cost is not an unconstitutional taking of property.[15] The Supreme Court has held that a regulated utility has no right to the maintenance of a particular overall level of return. The Court in Hope explained that, "the mere fact that the value [of the utility's property] is reduced does not mean that the [rate] regulation is invalid." Hope, 320 U.S. at 601.

The Commission has an obligation to balance the interests of the utility and its investors against the consumer interest in and legal obligation of establishing just and reasonable rates, id. at 603. The Takings Clause is only implicated if an agency's regulatory scheme produces overall rates so low as to "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital."

[13]In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, Order, October 12, 1995.

[14]The Commission need not be concerned with changing the mechanisms used to establish and regulate rates for access. In the seminal case on this issue, Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944), the Supreme Court held that agencies are "not bound to the use of any single formula or combination of formulae, in determining rates." Regulatory agencies are not required to maintain any specific rate methodology and are free to change their approach on a going forward basis. See, e.g., Duquesne Light Co. V. Barasch, 488 U.S. 299 (1989); Wisconsin v. Federal Power Commission, 373 U.S. 294 (1963). Had that not been the case, the incumbent local exchange carriers would not have been able to move from traditional rate of return regulation to price caps, a change which has been very lucrative to the incumbent LECs.

[15]U.S. Const. amend. V ("nor shall private property be taken for public use, without just compensation").

Duquesne, 488 U.S. at 312. [16]

Requiring the incumbent LECs to set their access charges at economic cost will not deny them an opportunity to earn reasonable returns. To the contrary, because economic cost includes the cost of capital and a reasonable share of overhead costs, setting access charges at economic cost actually guarantees incumbent LECs an ordinary and reasonable profit on their access services so long as they invest and operate efficiently. Moreover, pricing access at economic cost will not disable incumbent LECs from earning reasonable returns on their end user services. In addition, Congress has created new opportunities for incumbent LECs to use their interstate facilities to provide new services and gain new sources of revenue once they comply with the Act's mandate.[17] These new revenue opportunities, coupled with the Commission's continued evaluation of ILEC depreciation schedules, further mitigate ILEC taking arguments.

The claims, if true, that incumbent LECs will suffer short-term "losses" to the extent that their embedded costs exceed economic cost is immaterial. Firms in unregulated markets routinely risk losses due, for example, to their own inefficiencies and to improvements in technology that cause them to write off outdated assets.[18] Regulated utilities are not

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[16]See also, Federal Power Commission v. Texaco, Inc., 417 U.S. 380, 391-92 (1974) ("All that is protected against, in a constitutional sense, is that the rates fixed by the Commission be higher than a confiscatory level."); Permian Basin, 390 U.S. at 769 ("Regulation may, consistently with the Constitution, limit stringently the return recovered on investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness.") There is no regulatory taking unless the challenged rates cause "deep financial hardship." Jersey Cent. Power & Light Co. V. FERC, 810 F.2d 1168, 1181 n.3 (D.C. Cir. 1987).

[17]1996 Act at §271.

[18]A review of the financial books of the incumbent LECs reveals that these companies have taken extensive write downs of assets for tax and other purposes, while leaving these facilities on their books for regulatory purposes in an effort to force their captive customers to pay for their

constitutionally entitled to protection against such ordinary market forces.[19]

Indeed, for these reasons, the D.C. Circuit recently rejected BOC challenges to Commission regulations comparable to those contemplated here. In Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993) the court rejected a takings challenge to a rate order that served to "exclude part of [an] original investment from the rate base." Id. at 1263. Noting that the Commission has no obligation "to include in the rate base all actual costs for investments prudent when made," the court squarely held that, even if the exclusion resulted in a loss of revenues, "there simply has been no demonstration that the FCC's rate base policy threatens the financial integrity of the [incumbent LECs] or otherwise impedes their ability to attract capital." Id. Here, no such showing could plausibly be made. Put simply, even if requiring the incumbent LECs to set access charges at economic cost would cause them losses on past expenditure, a regulation that sets rates at a level that specifically includes the cost of capital will not prevent them from attracting the capital necessary for them to compete and prosper under a new regulatory paradigm.[20]

Consistent with the Access Charge Reform Order, the Commission should revisit its

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inefficiencies and poor business decisions.

[19] See e.g., Duquesne, 488 U.S. at 308-09 (approving rate methodology that "mimics the operation of the competitive market" and "gives utilities strong incentive to manage their affairs well and to provide efficient services to the public"); Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1485, 1503 (D.C. Cir. 1984) (utility has no right to "creamy returns" that are the result of monopoly power).

[20] A risk free rate of return would compensate the incumbent LECs for investments that don't pay off. There is a risk premium already built into their current authorized rate of return. Furthermore the companies have consistently earned in excess of their authorized rate return (see, ILEC 492A Forms, filed annually)

access reform policies and prescribe access charges that reflect forward-looking economic cost. At a minimum, the Commission should open a proceeding so that it will have an up-to-date and accurate level of competition in local exchange markets at the time it decides to lower access charges to reflect forward-looking economic cost.

IV. The Commission Should Eliminate the Distinction Between Primary and Non-Primary Lines, or Alternatively, Immediately Adopt a Standardized, Verifiable, Definition of Primary and Non-primary Lines

As MCI pointed out in its Emergency Petition, the Commission should eliminate the distinctions between primary and non-primary lines. This is one of few areas in which IXCs and ILECs agree.[21] First, as all of the parties commenting on this issue pointed out, the costs associated with implementing such distinctions clearly outweigh the benefits. The primary / non-primary distinction has required local and long distance carriers to spend millions of dollars on billing and auditing systems, without providing clear or substantial benefits to the public.

Second, if the Commission were to eliminate the distinction between primary and non-primary lines, the Commission would not have the daunting task of defining primary lines. All parties that submitted comments on this issue agree that it is in the public interest for the Commission to adopt a uniform, standard definition of primary lines as quickly as possible. One way to do this is to eliminate the artificial distinction. It is not important to MCI whether the Commission issue an order in this proceeding or in the Defining Primary Lines docket (CC Docket No. 97-181). It is important, however, that the Commission make a determination quickly, and that the definition of primary line is competitively neutral.

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[21] For example, see comments of BellSouth, GTE, MCI, Sprint, AT&T.

V. ILECs Are Required to Provide Timely, Accurate, and Verifiable Information to IXCs to Support ILEC PICC Charges

The Commission has already ordered that ILECs must provide to IXCs timely, accurate, and verifiable data to support PICC charges. In the Access Charge Reform Reconsideration Order, issued October 9, 1997, the Commission required the ILECs to provide IXCs with customer-specific information about the number and type(s) of PICCs they are assessing for each of the IXC's presubscribed customers.[22] In that order, the Commission recognized that this is necessary to provide IXCs the opportunity to develop a rate structure that recovers these costs in a cost-causative manner.[23] Nevertheless, as is pointed out in MCI's Emergency Petition, and in comment provided by large and small IXCs, ILEC PICC billing practices that violate the Access Charge Reform Reconsideration Order, coupled with vague line definitions, make it impossible for IXCs to develop accurate residential rates that reflect the distinction between primary and non-primary lines, business rates that reflect the distinction between multi-line and single-line business lines, and Centrex and ISDN lines.

In Comments filed March 18, GTE contends that the Commission should not intervene because this is an issue that is between ILECs and their access customers, which over time will

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[22] Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd. 16606 (1997) (Access Charge Reform Reconsideration Order), ¶16. Currently, MCI receives information from the ILECs showing which customer lines are presubscribed to MCI. MCI has no way of determining or verifying whether that line is primary or secondary residential, multi-line or single-line business, or Centrex lines.

[23] Specifically, the Commission stated that "If an IXC were to receive a bill for the aggregate amount of the PICCs assessed on its presubscribed lines and did not have access to information that indicates for which lines the LEC is assessing a primary or non-primary line residential PICC, the IXC would be unable to develop residential rates that accurately reflect the underlying costs of providing service over those lines." Id.

work itself out.[24] Similarly, USTA claims that no Commission action is needed because ILECs have no incentive to misrepresent primary and non-primary residential line information to their access customers.[25] Given that ILECs have monopoly control over the local customer and the local customer's line information, coupled with the fact that the ILEC has no incentive to give the IXC timely, accurate information, it is necessary that the Commission intervene.

As for USTA's suggestion that ILECs have no motivation to misrepresent line information, it is clear that ILECs can and will artificially, and significantly raise IXC costs simply by charging non-primary PICCs on primary lines. In fact, as review of MCI's recent PICC bills demonstrates, not only are ILECs sometimes billing MCI more than one PICC for the same line, in some instances MCI has received PICC charges for lines that are not even presubsribed to MCI. But even so, customers have a right to itemized bills without proving malevolence on the part of their vendor.

SBC, USTA, BellSouth, Bell Atlantic, Ameritech, and US West all argue that the PICC is not a new charge -- that it simply replaces the CCL. They claim that the IXCs are attempting to pass through the PICC to end users simply to gain windfall profits. The ILECs argue that the Commission should not impose additional burdensome billing requirements on the ILECs simply to facilitate IXC pass through of the PICC to end users.

As an initial matter, on March 2, 1998, in response to Chairman Kennard's letter of February 26, 1998, MCI demonstrated that MCI specifically, and long distance carriers generally, have passed along to the benefit of their customers the modest access charge savings

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[24] GTE Comments at 1.

[25] USTA Comments at 16.

that have resulted from the orders issued by the Commission in May of 1997. In that letter (see Appendix A), MCI demonstrated that MCI's long distance rates have dropped further and faster than recent access reductions and that MCI customers have received nearly half a billion dollars of additional savings since July 1, 1997. In fact, Chairman Kennard recently stated before a group of consumer advocates that:

> "[l]ong distance rates fell 5.3% between January 1996 and November 1997. Long distance prices are now at the lowest they have ever been.[26]

By contrast, the ILECs increased their revenues for access charges, boosting their revenues and earnings yet again in 1997, despite the Commission's Price Cap and Access Reform orders. They completely misunderstand the way that a competitive market, unlike these monopolies, anticipates change. The incumbents do not seem to be able to grasp, for example, that MCI, with the introduction of its 5 Cents Sunday program and other initiatives, passed through savings well in excess of access charge savings to every MCI customer even before January access restructuring came into effect. That is because competitors see creative opportunity in price reductions where monopolies see only legal requirements. Any suggestion that MCI is profiting from access charge restructuring or from the implementation of new charges is completely false.

Bell Atlantic claims that MCI's 5 Cent Sunday's is only a promotional device and should not be considered as part of its obligation to flow through access charges.[27] First, MCI's 5 Cent

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[26] FCC Chairman William Kennard to the National Association of State Utility Consumer Advocates, February 9, 1998.

[27] Bell Atlantic Comments at 4.

Sunday program is not a temporary promotion; it is available to all MCI customers. To receive the low 5 cent rate, a customer simply needs to sign-up for any MCI consumer services. No additional steps are needed -- our customers receive the same low Sunday rate whether they participate in a calling plan such as MCI One, which is the case for the vast majority of our customers, or subscribe to our basic schedule, make 2 hours of calls, or 2 minutes of calls. Additionally, Bell Atlantic ignores the fact that 5 Cent Sundays is just one mechanism used by MCI to pass on savings to its customers. MCI has also rolled out many new products, offered 20 percent cash back for small business customers, renegotiated contracts, and migrated customers to lower rate products.

Bell Atlantic has also filed with its comments a declaration by Frank Gumper purporting to demonstrate that MCI's pricing practice has been to attract customers through frequent introduction of new discount plans with "great fanfare," and then, as these plans are overtaken by new promotions, quietly raise the rates for those customers that don't switch to the latest plan.[28] To support this assertion, Mr. Gumper says that he signed on to MCI's "MCI Minutes" plan in December 1996, and has since seen five separate rate increases.

First, as Mr. Gumper admits, MCI continually offers its customer many new savings plans. Depending on a customer's calling habits, some plans may offer a customer increased savings over other plans. As Mr. Gumper also admits, MCI typically introduces these savings plans with "great fanfare." MCI encourages customers to remain involved in their long distance buying and to regularly call for the latest plan. Customer service representatives work with customers to assess changing needs and calling patterns and update the calling plan accordingly

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[28]Bell Atlantic Comments at 5.

to ensure that customers benefit from reductions in MCI's long distance rates. MCI also uses much fanfare to introduce its latest calling plans to educate both new and existing customers on the benefits. For instance all MCI customers enjoy 5 Cent Sundays and have increased their Sunday calling to match average Mother's Day traffic (the highest Sunday traffic of the year) every Sunday. It is therefore unlikely that customers are unaware of these savings plans. MCI cannot force its customers -- like Mr. Gumper -- to change savings plans; it can simply make these plans available and known to its customers.

Second, MCI rate reductions have focused on interstate direct dial rates to provide benefit to the majority of our customers. When reviewing the January invoice example enclosed in Mr. Gumper's declaration, a 33% decline in interstate direct dial rate occurs when comparing May 1997 MCI Minutes to today's MCI One calling plan. Even when the $1.07 National Access Fee is included, rates declined by more than 28% in Mr. Gumper's example.[29] Nothing prevents Mr. Gumper from migrating to MCI One.

The ILECs are also incorrect in their claim that the PICC simply replaced the CCL, and therefore should not be passed through as a new charge.[30] MCI believes the cost of serving customers should be reflected in the retail price to those customers – as the Commissions's new access rate structure encourages. Like many other IXC, in wake of the Commission's Access Charge Reform Order, MCI changed its cost structure to correlate to the access charge

[29]Card Calling average monthly usage among using MCI customers is dramatically less than the minutes of use mentioned in the declaration. Since Mr. Gumper's card usage dominates total monthly minutes, he does not represent an average MCI customer, and increases the total invoice effective rate/minute dramatically.

[30]Ameritech Comments at 16; SBC Comments at 5-6; US West Comments at 7.

restructuring ordered by the Commission. MCI passed through to its customers savings resulting from mandated access reductions, such as reduced CCL charges, and correctly treats the PICC as the new charge that it is.

VI. The Commission Should Immediately Determine that IXCs Can Notify ILECs of De-PIC's

The Commission should immediately grant Sprint's request for a declaratory ruling that an IXC that has lawfully terminated service to an end user and has timely notified the end user's local exchange carrier of this termination is not liable for PICCs with respect to that end user's lines. Furthermore, because the IXC is not liable for its former customers' PICCs, the ILEC should cease billing the PICC to the IXC once it receives notification of the termination of the customer account. None of the arguments advanced by the ILECs establishes any basis for the Commission to find that IXCs are liable for the PICC associated with their former customers' lines.

Several of the ILECs attempt to paint the picture that if IXCs are allowed to terminate relationships with their customers at will, then they will systematically de-PIC low-volume usage customers. SBC takes this care tactic to a new level by introducing the term "scramming." SBC defines scramming as the IXC process of getting rid of the customers that IXC does not want because the IXC, at its sole discretion, has determined that the customer does not have the usage necessary to justify profitability for that IXC, or because of slow payment or other problems in the IXC-customer relationship.[31] SBC's red herring should be immediately dismissed. IXCs only

[31]SBC Comments at 7.

seek clarification that the Commission requires ILECs to process de-PICCs when notified by the IXC, in those instances where a customer has violated the tariff, and for which the IXC has provided timely notification. The long distance industry is competitive. Scramming, as SBC calls it, is merely a product of fecund monopoly imagination.

Some ILECs argue that they should not be required to de-PICC a customer at the request of the IXC because that would place them in the middle of the dispute.[32] This argument is without merit, as the ILEC is already in the "middle." The only difference is that they would prefer to be on the side that inflates IXC costs.

Immediate action is required by the Commission because the issues raised by Sprint's petition are already evident in the invoicing that MCI has received for January PICCs. Ameritech's line detail data, which is the first line data MCI has exhaustively examined, includes lines for which MCI has no corresponding customer account. It is our expectation that, as we move forward to reconcile data with Ameritech, we will find cases where we have discontinued a customer for nonpayment but Ameritech continues to treat that customer as presubscribed to MCI. We fully expect these issues to surface with every PICC invoice we review. An immediate declaratory ruling will assist in avoiding many of the billing disputes that can be expected to arise if ILECs bill IXCs for the PICCs associated with disconnected customers' lines.

VII. The Commission Should Prescribe Tariff Language Requiring ILECs to Provide IXCS Information Supporting the Amount of Universal Service Subsidies Included In Access Charges

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[32] Ironically, while the ILECs to not wish to be placed in between the customer and the IXC, they have no problems placing the IXC between the ILEC and the customer when it comes time to collect the PICC for the ILECs.

Today, the full amount of MCI's federal universal service contribution is not known because the ILECs are not itemizing the amount of interstate access charges billed to MCI and other IXCS that is, in fact, universal service contribution. Accordingly, in its Emergency Petition, MCI requested that the Commission prescribe that the ILECs' access bills include a line item breaking out the amount of universal service that is passed through to IXCS in each access element.[33] In the alternative, MCI requested that the Commission order the ILECs to report monthly to IXCs the percentage of revenues recovered in each basket that represents ILEC USF contributions.

In comments filed March 18, ILECs argued that this amount need not be broken out under the Commission's existing price cap rules, and that they should not be so required because it would increase their billing costs. While MCI recognizes that in the Universal Service Order the Commission found that ILECs could recover their universal service contributions through interstate access charges, and that its current regulations do not specifically require ILECs to break out and clearly identify this amount on an element-by-element basis, such a break out is indeed required by the Telecommunications Act of 1996. The Telecommunications Act of 1996 clearly requires that universal service subsidies be specific and explicit. As long as these universal service charges remain implicit or hidden in interstate access charges, the ILECs' recovery of universal service contributions violate the Telecommunication Act's requirement that all universal service subsidies be explicit.

[33] For example, the ILECs should separate the amount of universal service contributions that are recovered through PICCs from the amount recovered though carrier common line charges.

VIII. Conclusion

Wherefore, the Commission should adopt prescriptive measures that will ensure that access charges are quickly driven to forward-looking economic cost. Additionally, it should immediately prescribe the modifications delineated in MCI's Emergency Petition for Prescription to ensure that (1) IXCs have the opportunity to recover their costs efficiently, and (2) harm to long distance consumers resulting from ILEC PICC billing delays is mitigated.

Respectfully submitted,
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